



## Justice in a Time of Austerity: Stories from a System in Crisis

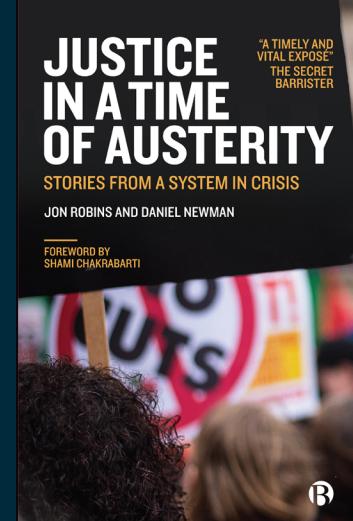
### OVERVIEW

Our book is about access to justice, what it means and what its absence entails for our justice system and for those caught in it. The Legal Aid, Sentencing and Punishment of Offenders Act 2012, or LASPO, was intended to introduce the most radical package of reforms to the legal aid scheme since our system of publicly funded legal advice was established as a fundamental building block in the architecture of the post-Second World War welfare state. The reforms came into force in April 2013.

As our book demonstrates, the LASPO reforms were 'radical' in a wholly negative and destructive sense. The Coalition Government's flagship legislation was predicated on one idea above all others: to cut £350 million a year from a £2.1 billion budget. Such swingeing cuts took place as the Coalition Government imposed its austerity policies on the UK.

Over a 12-month period starting in October 2018, we interviewed people across England and Wales about their experiences of the justice system.

Our approach was to talk to people about what access to justice meant to them, what was at stake for them and where they went for help; and, then, interview those professionals who were there for them on the frontline – if, indeed, anybody was.



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## CONCLUSIONS

The LASPO cuts were the deepest and most reckless since the legal scheme was introduced 70 years ago under the Legal Aid and Advice Act 1949. They were achieved by removing public funding for welfare benefits, housing (except where there is a risk of homelessness), employment, family law (unless there is evidence of domestic violence), and immigration and asylum.

The legal aid scheme has been cut to the bone. All that remains is what could not be removed because of the residual protections afforded by the European Convention on Human Rights.

When we started our research, the Ministry of Justice's data reported that the number of not-for-profit agencies and legal aid firms offering social welfare law advice had collapsed by a third over the five years since LASPO. The withering on the vine of the civil legal aid scheme continued for the fifth consecutive year running and the number of providers was down 5% on the previous year. The scheme was in free-fall: caseloads in immigration were down by 9% in the last quarter compared to the previous year; mental health cases dropped by 8%, and housing by 4%. Legal help (advice and assistance under the legal aid scheme other than representation in a court or tribunal) had collapsed to less than one-third of pre-LASPO levels. That there is a crisis in our justice system is uncontroversial.

Most commentators seem to understand the legal aid crisis as being exclusively about our broken criminal justice system, a reality brought to popular attention by The Secret Barrister author and blogger. When lawyers talk about the campaign to save legal aid, often they mean the campaign to preserve legal aid for defence lawyers. Defence lawyers have not had a pay rise for over two decades and had an 8.75% fee cut foisted on them in 2014. This is a worthy cause but it is a different cause.

The topic of our book is the other crisis in our justice system – the one that is rarely talked about: the evisceration of our system of access to justice in the civil and family courts.

Our book is about access to justice, not legal aid. Many of the people we spoke to had never seen a lawyer, let alone received legal aid. Some would not be eligible for the latter. It is quite possible to be poor and not qualify for legal aid under the narrow terms of the means test. Even if they were eligible, they might not be able to find a lawyer or (most likely) their case would not be covered by the post-LASPO scheme.

The shrinking legal aid scheme means that it has increasingly become an irrelevance. The proportion of the population eligible for legal aid has collapsed from 80% in 1980 to 29% in 2007, and could possibly be as low as 20% today.

## POLICY RECOMMENDATIONS

**Access to justice must be a right.** There is an urgent need for a wholesale reappraisal of what a properly funded system of legal support looks like. That must involve a restoration of the post-war political consensus around access to justice which has long been in decline and ended with LASPO – in other words, the cross-party agreement that legal redress should not be restricted to those with enough money to pay for legal advice. We back the Bach Commission's proposal for a Right to Justice Act. This would place a right to access to justice (i.e. for people to have legal assistance without incurring costs that they cannot afford) on the statute book.

**Early advice is crucial.** We heard repeatedly how people's problems snowballed for want of early advice – someone loses their job, has difficulties claiming welfare benefits, falls into arrears with rent payments and ends up facing homelessness. In the government's post-implementation LASPO review, ministers agreed to test forms of early intervention and evaluate whether they were cost-effective. We back calls for the restoration of legal aid for early legal help for social welfare law. Cost-savings from preventing the escalation of problems justify additional funding being put into legal aid for advice.

**Legal aid coverage must be comprehensive.** Geography plays a critical role in whether and how people experience access to justice. We found gaps in provision known as 'legal aid deserts'; but also 'droughts' – firms and advice agencies not using case allocations despite demand for services due to losing money on fixed fees. The present system is a postcode lottery and the government's failure to ensure even coverage is causing suffering. We need legal advice guaranteed by the state, funded through legal aid accessible to all who require it, when they require it, wherever they are in England and Wales.

**Advice must be (hyper)local.** Provision of publicly funded legal advice needs to go directly to the people and the communities who need it, where they need it. Local expertise is critical in ensuring that access to justice works in practice. We saw the effectiveness of legal advice provided by local agencies in innovative settings such as foodbanks, homeless shelters and MPs' surgeries. Local authorities should be encouraged and enabled to work with or commission legal support plans from local not-for-profit and advice agencies. These could embed advice in settings where people regularly go. Local organisations know best the need on their doorstep, where problems arise and how to target help. Responsibility and resources need be devolved to the local level, and people encouraged to see the benefits of access to justice as part of the broader web of local welfare provision.

**Clear advice about legal rights advice must be readily available – and jargon banned.** The legal system is confusing and overwhelming for many. Access to justice should not simply mean having a lawyer. People find the law incomprehensible because, frankly, it is to all but those who practise it. Public legal education should be brought into the school system, ensuring that people learn their rights (and how to enforce them) from an early age. People also need access to information about legal rights, processes and costs in plain English. There is a dearth of high-quality, freely available independent information about the justice system. There should be a centrally branded, easily navigable portal for online information and advice. We want a ban on 'legalese' in court forms and guidance including the removal of unnecessary technical language (e.g. *litigant-in-person*) and Latin terms (e.g. *pro bono*).



## About the book

How are poverty and social inequality becoming entrenched through a failing civil justice system?

Jon Robins and Dan Newman combine investigative journalism and academic scholarship to examine how the lives of people suffering problems with benefits, debt, family, housing and immigration are made harder by cuts to the civil justice system.

Drawing on 150 interviews conducted with those denied justice, as well as up-to-date academic research, sector reports and news stories, they demonstrate how failure to access justice often represents a catastrophic step in the life of that person and their family.

Readable yet robust, this powerful account humanises the hostile political debates that surround legal aid issues and reveals what access to justice really means in Austerity Britain.

**Daniel Newman** is Senior Lecturer in Law at Cardiff University. He researches and writes extensively on topics around access to justice, including on a bestselling book on the impact of legal aid cuts and numerous journal articles.

**Jon Robins** is an award-winning freelance journalist, author and lecturer at Winchester University. He has written about justice issues for over 20 years for the Guardian, Times, Independent on Sunday, Mail on Sunday and Observer, as well as two books on miscarriages of justice. He is the founder of The Justice Gap website: [thejusticegap.com/author/jon-robins](http://thejusticegap.com/author/jon-robins)

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"A TIMELY AND VITAL EXPOSE"  
THE SECRET BARRISTER

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STORIES FROM A SYSTEM IN CRISIS

JON ROBINS AND DANIEL NEWMAN

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